

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

Rory L Mickens,

Petitioner,

v.

Ron Haynes,

Respondent.

CASE NO. 3:20-cv-05325-RBL-DWC

ORDER

The District Court has referred this action filed under 28 U.S.C. § 2254 to United States Magistrate Judge David W. Christel. Currently pending in this action is Petitioner Rory L Micken’s Motion for Appointment of Counsel (“Motion”). Dkt. 9.¹

There is no right appointed counsel in cases brought under 28 U.S.C. § 2254 unless an evidentiary hearing is required or such appointment is necessary for the effective utilization of discovery procedures. *See McCleskey v. Zant*, 499 U.S. 467, 495 (1991); *United States v.*

¹ The Clerk’s Office docketed Petitioner’s attachment as a “Second Motion,” but it appears to be further argument and documentation in support of his Motion. *See* Dkt. 9-1.

1 *Duarte-Higareda*, 68 F.3d 369, 370 (9th Cir. 1995); *United States v. Angelone*, 894 F.2d 1129,
2 1130 (9th Cir. 1990); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983); Rules Governing
3 Section 2254 Cases in the United States District Courts 6(a) and 8(c). The Court may appoint
4 counsel “at any stage of the case if the interest of justice so requires.” *Weygandt*, 718 F.2d at
5 954. In deciding whether to appoint counsel, the Court “must evaluate the likelihood of success
6 on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the
7 complexity of the legal issues involved.” *Id.*

8 Here, Petitioner asserts he is has Attention Deficit Disorder (“ADD”) and dyslexia. Dkt.
9 9. Plaintiff alleges that he has problems writing and concentrating. Dkt. 9 at 1. Plaintiff further
10 states that he has trouble staying on task and formulating complex legal writing. Dkt. 9 -1 at 1.

11 At this time, the Court does not find good cause for granting leave to conduct discovery
12 and has not determined an evidentiary hearing will be required. *See* Rules Governing Section
13 2254 Cases in the United States District Courts 6(a) and 8(c). Additionally, Petitioner effectively
14 articulated his grounds for relief raised in the Petition, and the grounds are not factually or
15 legally complex. *See* Dkt. 8. Petitioner has also not shown he is likely to succeed on the merits
16 of his case.

17 While Petitioner states he has trouble writing and concentrating, he has successfully filed
18 a complete Motion to Proceed *In Forma Pauperis* after being notified of a deficiency, the
19 Petition, and this Motion, all of which are are clear and understandable to the Court. Dkt. 1, 2, 4,
20 5, 8, 9. The Court finds Petitioner has been able formulate responses to the Court’s orders and
21 understand filings in this case. *See id.* Thus, Petitioner has not shown he is unable to litigate this
22 case without the assistance of counsel because of his ADD and dyslexia.

1 The Court finds Petitioner has not shown appointment of counsel is appropriate at this
2 time. Therefore, the Motion for the Appointment of Counsel (Dkt. 9) is denied without
3 prejudice.

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5 Dated this 21st day of May, 2020.

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8 David W. Christel
9 United States Magistrate Judge
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